



A resource for judges resolving water conflicts

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What Are YOUR “Hot Topics” in Water?

In order to offer more timely training, *Dividing the Waters* will develop a series of webinars on hot topics in water. The Conveners have identified some possible topics but seek your thoughts on what you most wish to learn. Possible topics include: Colorado River update, SCOTUS *Sackett* (WOTUS) or *Navajo* (tribal water rights) decisions. Please tell us your favorite “hot topics” in water, through [this survey](#).

Lower Basin States Reach Short-Term Accord, to 2026

AZ, CA and NV agreed to reduce their diversions by 3 million acre-feet (MAF) by 12/31/26, with 1.5 MAF “conserved” by the end of 2024. They propose that the Federal Government pay for up to 2.3 MAF of the reductions.

SCOTUS Narrows “Waters of the United States”

In response to an Idaho property owner who filled a wetland, the Supreme Court narrowed the definition of “Waters of the United States” (WOTUS) under the Clean Water Act (CWA). In *Sackett v. US*, it adopted the late Justice Scalia definition, from his plurality opinion in *Rapanos v. US* (2006).

Michael and Chantell Sackett bought a small lot near Priest Lake in Idaho in 2004. In order to build a home, they began backfilling their property with rocks and dirt. A few months later, US EPA sent them a compliance order alleging that their property contained a wetland that the CWA protected. EPA ordered them to restore the wetland or face a \$40k/day fine.

The Sacketts filed an Administrative Procedure Act lawsuit alleging that EPA did not have CWA jurisdiction over their property. After the district court found EPA had not taken final agency action, SCOTUS held that the Sackett suit could proceed. After 7 years on remand, the district court granted EPA summary judgment and the Ninth Circuit affirmed. SCOTUS granted *cert* to “decide the proper test” to determine when wetlands are “waters of the US.”

Justice Alito, writing for the Court, concluded that “the *Rapanos* plurality was correct.” WOTUS includes “only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic[al] features.’” The Court recognized that CWA covered some wetlands, so it adopted *Rapanos*: “the wetland has a continuous surface connection with that water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.” Justices filed three concurring opinions, with Justice Kavanaugh, distinguishing “adjacent” from “adjoining.” His definition would include nearby wetlands without a “continuous surface connection.”

NJC/DTW Will Seek Funding from State Governments

As NJC and *Dividing the Waters* begin developing a complete program on water law and science, they will seek support from state governments. State support may lead to those states enjoying the full benefits of *Dividing the Waters*, while judges from other states pay full cost of each webinar or conference.

In Focus: Special Water Master Sherri Zendri (AZ)

For AZ Special Water Master Sherri Zendri, water shows at the very roots of her professional career, but water law adjudication only sprouted recently. After her predecessor (and DTW member) Susan Harris retired, Maricopa County Judge Scott Blaney appointed Zendri, in April, to “master” the AZ water right adjudication cases. Harris introduced Zendri to *Dividing the Waters* before she left.

Zendri has a long history on the technical side of the environment. After graduating from Penn State, she started her water career as a field hydrogeologist on the East Coast, in groundwater remediation. In 1996, a high school visit inspired her to move west, as AZ offered the West’s rugged beauty.

For many years, Zendri worked for AZ Department of Environmental Quality (ADEQ), while she obtained an MPA from ASU. At ADEQ, a private attorney identified a weakness that forced her project to start over, which inspired her to get a JD from U of AZ. In 2012, she joined ADEQ’s executive team as Administrative Counsel. Five years later, Zendri took a break from natural resources law and joined the AZ Lottery as Deputy Director and General Counsel.

AZ headlines on water and the call of the rivers drew Zendri back to her water roots. Except for Zendri, most AZ water attorneys were in the AZ General Stream Adjudication. Her water interest/experience and lack of conflicts made her a good fit for Special Water Master. Judge Blaney, who the AZ Supreme Court appointed water judge in January, had little experience in water, so they make a good team – an experienced litigator/judge and a water expert.

Zendri looks forward to her first *Dividing the Waters* conference. She strongly advocates interstate collaboration, especially at this critical moment in the West’s water history. Despite a short-term, interstate accord, the Colorado River remains in crisis. Litigation, in both federal and state courts, will come at some point. She found encouraging news that NJC, working closely with DTW, was developing a more comprehensive interstate water law program for all judges, particularly those who do not have her experience in water.

Ideas for Network Note? Court Decision on Water? Contact ALFIII@sbcglobal.net